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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/718,943	11/22/2000	Thomas Gassenmeier	H 4325	1228

7590

04/29/2004

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 09/718,943	Applicant(s) GASSENMEIER ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-12, 14, 15, 18 and 19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12, 14, 15, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 9, 2004 has been entered.

2. Claims 10-12, 14-15, 18 and 19 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. The rejection of claims 10-12, 14-15, 18 and 19 under 35 U.S.C. 103(a) as being unpatentable over Block et al. (WO 92/17404) is withdrawn in view of applicants' amendment.

6. The rejection of claims 10-12, 14-15, 18 and 19 under 35 U.S.C. 103(a) as being unpatentable over Baillely (GB 2,337,054) is withdrawn in view of applicants' amendment.

7. Claims 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaujean et al. (US Patent No. 5,505,875), hereinafter "Beaujean".

Beaujean teaches finely divided sodium percarbonate whose storage stability is improved by melt-coating of water-insoluble encapsulation agents (see abstract), such as long chain saturated carboxylic acids which usually contain up to about 24 C atoms (see col. 5, lines 31-34; 47-48). The protective layer around the percarbonate granule is usually applied in a proportion of at least about 1% by weight, preferably at least about 2% by weight but no more than about 15-20% by weight of the coating material, based on the finished product (see col. 9, lines 16-26). The finely divided sodium percarbonate has particle sizes in the range of about 0.1 to 2 mm diameter, suitably between about 0.2 and 0.8 mm (see col. 9, lines 27-32). Beaujean, however, fails to specifically disclose coating the percarbonate with stearic acid and the amount of the stearic acid that is governed by the recited formula.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stearic acid as the encapsulation or coating agent because this is one of the species of fatty acids (up to 24 C atoms) taught by Baujean and to optimize the proportions of the

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stearic acid through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

8. Claims 10-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brichard (US Patent No. 4,421,669).

Brichard teaches a process for the stabilization of sodium percarbonate particles (see claim 6) which comprises introducing a coating agent into a continuously operating fluidized bed in the form of solid particles and maintaining the fluidized bed at a temperature between the temperature at which the coating agent begins to melt and this same temperature plus 20°C, with the solid particles of the coating agent having a diameter between 0.05 and 10 mm, the amount of coating agent being between 0.01 and 10% by weight of the peroxygen compound, the diameter of the percarbonate being between 0.01 and 2 mm, the coating agent being a wax having an initial melting point of between 50° and 90°C and selected from high molecular weight hydrocarbons, fatty acids and their derivatives, fatty alcohols and mixtures of these (see claim 1; col. 3, lines 40-43 and line 66; col. 4, lines 34-37). The flow rate of coating agent is generally between 0.01 and 50 g per minute and per liter of bed (see col. 4, lines 43-57). The fatty acids contain at least 10 carbon atoms, preferably saturated fatty acids containing 14 to 25

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carbon atoms (see col. 2, lines 44-60). Brichard, however, fails to specifically disclose coating the percarbonate with stearic acid and the amount of the stearic acid that is governed by the recited formula.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stearic acid as the coating agent because this is one of the species of fatty acids taught by Brichard and to optimize the proportions of the stearic acid through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

9. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyakumar et al. (US Patent No. 5,489,399).

Koyakumar teaches a process for producing a carbon dioxide gas generating composition wherein a component acid and a component alkali carbonate (see col. 3, line 66 to col. 4, line 3) is coated with hydrophobic materials for example, fatty acids such as saturated fatty acids having about 6 to about 22 carbon atoms like stearic acid (see col.6, lines 1-53). Preferred alkali carbonate is sodium carbonate (see col. 4, lines 37-51) having a particle size up to 2 mm (see col. 4, lines 52-62). The carbonates are incorporated into the generating composition in an amount of 5-40 weight % (see col. 5, lines 27-30). The hydrophobic materials

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are used in an amount of not smaller than 0.1 wt% to not greater than 40 wt%, based on the generating composition (see col. 6, lines 41-53). The carbon dioxide gas generating composition can be used with oxygen generating agent (see col. 7, lines 25-28). Koyakumar, however, fails to specifically disclose coating the carbonate with stearic acid and the amount of the stearic acid that is governed by the recited formula.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stearic acid as the coating agent because this is one of the fatty acids taught by Koyakumar and to optimize the proportions of the stearic acid through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313.

The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon
Lorna M. Douyon
Primary Examiner
Art Unit 1751